

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. Nos. 474, 531 & 532/Del/2017
(Assessment Years: 2007-08 TO 2009-10)

Smt. Geeta Bhasin, C/o. Sandeep Sapra, Advocate, C - 763, New Friends Colony, New Delhi - 110 025. PAN: ACDPB6005D	Vs.	ACIT, Circle : 28 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Sandeep Sapra, Advocate;
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing :	5/10/2021
Date of pronouncement :	29/10/2021

ORDER

PER PRASHANT MAHARISHI, A.M. :

01. This is the bunch of three appeals concerning the one assessee involving similar grounds of appeal, argued together by both the parties and, therefore, these are disposed of, by this common order. In all these three appeals common issue in challenge is to action of the ld AO u/s 147 of the act based on assessment for Ay 2011-12 and addition u/s 68 of the act with respect to one party.
02. We first take up the appeal for AY 2007-08 for the reason that there are similar reasons recorded for all the three assessment years and similar addition is made in reopened assessment.
03. I. T. Appeal No. 474/Del/2017 is filed by the assessee for assessment year 2007-08 against the order passed by the ld. CIT (Appeals)-10, New Delhi, dated 28.11.2016 raising a solitary issue confirming the addition of Rs. 10,00,000/- under Section 68 of the Income Tax Act, 1961 (the Act) on account of amount received from one company and further against the re-opening of the assessment by the ld. Assessing Officer.

04. Brief facts of the case shows that assessee is deriving income from salary, house property, business income and income from other sources. She is engaged in running a restaurant. She filed return of income on 20.02.2008 declaring an income of Rs. 7,71,400/-. The same was accepted as it is.
05. Subsequently, the Id. Assessing Officer issued a notice under Section 148 of the Act on 27th of March 2014. The reasons for re-opening are placed at para No. 3 of the assessment order as under:-

“The case of the above assessee for the A.Y. 2011-12 was assessed u/s 143(3) at an income of Rs. 7,35, 76,210/- against the returned income of Rs. 63,16,210/- derived from business of running restaurant under name and style (Dhaba T.O.T.), income from rental and interest income. The assessee has filed return of income for the A Y 2007-08 declaring total income of Rs. 7,71,400/- which included income from Business & Profession, Long term capital gain, and— income from other sources.

During the course of proceedings, assessee was found to have adjusted a sum of Rs. 40,00,000/- against advance received for a plot. Assessee claimed that she had received an advance of Rs. 2.34 crore from M/s PACL India Ltd. Since deal was cancelled, she returned the advance to that company and the amount of Rs. 40 lakh was adjusted against the outstanding contractual payments against the said company.

However, assessee was not able to prove identity as well as the creditworthiness of creditor and genuineness of the transaction for which she claimed to have received a sum of Rs. 2.40 crore from M/s PACL India Ltd. because she failed to give any evidence in support of her statement such as copy of agreement in respect of above deal or confirmation from

M/s PACL India Ltd. She simply stated that the deal was cancelled and the advance was refunded.

As per copy of account of M/s PACL India Ltd. in books of accounts of assessee, she has received following amounts in different year in connection with aforesaid advance:

F.Y. 2006-07	Rs. 10,00,000/-
F.Y. 2007-08	Rs. 1,45,00,000/-
F.Y. 2008-09	Rs. 79,00,000/-

Out of this a sum of Rs. 50,00,000/- is said to have been paid back on 18.03.2010.

In view of the above facts, I have reasons to believe that by reason of omission or failure" on the part of the assessee to disclose truly and fully all material facts necessary for assessment, income chargeable to tax amounting to **Rs. 10,00,000/-** has escaped assessment for which notice u/s 148 is required to be issued within the meaning of sec 147 of the IT Act, 1961 for the AY 2007-08. ”

06. The assessee submitted her reply-raising objection against re-opening of the assessment. On 16.02.2015, the Assessing Officer rejected the objections.
07. On the merits, it was found that assessee has received a sum of Rs. 10,00,000/- from M/as. PACL in March 2007. The assessee has submitted the confirmation of the above party as well as the bank statement. The ld. Assessing Officer noted that assessee has received the sum in three different financial years from the above party as stated in the reasons recorded. The ld Assessing Officer noted that though assessee has established the identity of the creditor as well as provided the confirmation, but has failed to prove the genuineness of the transaction. Assessee also produced agreement entered into with the above party and submitted that as the business transaction could not conclude assessee has also refunded the sum to the above party. The ld. Assessing Officer rejected the agreement produced by the assessee

and further noted that assessee has failed to provide satisfactory explanation for the genuineness of the above transaction and, therefore, provisions of Section 68 of the Act are applicable. Therefore, he made the addition of the sum of Rs. 10,00,000/- under Section 68 of the Act and assessed the total income of the assessee at Rs. 17,71,400/- against the returned income of Rs. 7,71,400/- by passing an order dated 27th March, 2015 under Section 147 read with Section 143(3) of the Act.

08. The assessee challenged the above order before the Id. CIT (Appeals) who dismissed the appeal of the assessee as per para No. 4.1 of the order holding that from the copy of MOU, it is evident that there are certain facts, which makes it clear that assessee has failed to establish the genuineness of the transaction in question, which are discussed as under:

- i. As per alleged copy of MOU, M/s PACL India Ltd., authorized the appellant to commence negotiations with the owners of the properties in connection with purchase thereof on its behalf on terms and conditions feasible to it. However, despite being given ample opportunities by the AO and the undersigned, appellant has failed to provide any documentary evidence to comply with the above condition, as laid out in the MOU. Ld. AR has failed to explain the terms and conditions entered into between M/s PACL India Ltd. and the appellant, the basis on which assessee received an advance for the land in question.
- ii. No documentary evidence has been provided by Ld. AR to establish that assessee entered into any negotiation on behalf of M/s PACL India Ltd. to finalise the deal and the consideration settled between her and the sellers of the, has been confirmed by M/s PACL India Ltd.
- iii. Simple assertion that appellant has acted on behalf of M/s PACL India Ltd. cannot be relied upon in the absence of any corroborative evidence.
- iv. From the copy of MOU, it is not clear what was the total consideration agreed upon for the purchase of properties in question, against which alleged amount was received by the assessee from M/s PACL India Ltd.

- v. There is no evidence on record through which it can be gathered that assessee entered into any negotiation with the sellers of the plot of land, which ultimately failed to materialize.
 - vi. No evidence/details have been furnished by the assessee with regard to the cancellation clause of MOU entered into with between M/s PACL India Ltd.
 - vii. In the absence of any corroborative documentary evidence, the submissions of the appellant that she has received advance from M/s PACL India Ltd. of Rs.2.34 crore in three different financial years is not acceptable. As per normal business practice, advance for purchase of property is given only when there is clear intent that deal has been finalized for an agreed consideration. Hence from the details available on record, the exact nature of amount received by the appellant from M/s PACL India Ltd. remained unexplained.
 - viii. The fact also remained unexplained in the absence of any corroborative evidence why M/s PACL India Ltd. continuously paid advance which is spread over in three different financial years when assessee failed to materialize any deal.
 - ix. Appellant miserably failed to produce the original copy of MOU not only before the AO but before the undersigned as well for verification.
 - x. As per MOU the same has been entered through Mr. Gurmeet Singh and Mr. S. Bhattacharya, who were appointed as whole time Directors of the Company only on 01.02.2009, whereas the MOU is dt.26.02.2007. During the appellate proceedings a general reply has been filed in this regard by the Ld. AR that a clerical mistake has crept in while drafting the above MOU.
09. Such order was passed on 28.11.2016 and assessee is aggrieved with that. Therefore has preferred this appeal.
10. At the time of hearing assessee raised an additional ground of appeal:-
- “The impugned assessment order dated 27.03.2015 as passed under Section 147 read with Section 143(3) of the Act deserves to be quashed as the initiation of proceedings is bad in law.”
11. The assessee submitted that the requisite application has been filed on 31st December, 2019 stating that it is purely a legal ground, do not require any fresh facts to be investigated and goes to the root of the

matter and, therefore, it deserves to be admitted. It was stated that this issue was raised before the Id. CIT (Appeals) as per para No. 1 of the written submissions. Assessee relied on the decision of Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT 229 ITR 383 (SC) and requested for admission of the same.

12. The Id. AR also argued the same.
13. The Id. DR vehemently objected to the request for admission of additional ground of appeal stating that the assessee has not challenged the same before the lower authorities and has submitted during the assessment proceedings accepting the re-assessment proceedings. Therefore, this ground cannot be raised now.
14. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the ground raised by the assessee goes to the root of the matter. It is a jurisdictional issue and no further facts are required to be investigated. Therefore, it deserves to be admitted. Hence, we admit the same.
15. As the additional ground is re-opening of the assessment, we proceed to decide the same first.
16. The Id. AR submitted that the reasons for re-opening shows that during the assessment year 2011-12 assessee was found to have adjusted a sum of Rs. 40,00,000/- against advance received for a plot of land. In that assessment year assessee has claimed that she has received an advance of Rs. 2.34 crores from M/s. PACL India Ltd. Since the deal was cancelled, she has returned the advance money of Rs. 40,00,000/- back to that company. Assessing Officer held that as the assessee was not able to prove the creditworthiness of the above party, as she could not give any evidence, but merely stated that the deal was cancelled and the advances were refunded. The fact shows that as per the copy of the accounts of that creditor in the books of the assessee, assessee received Rs. 10,00,000/- in Financial Year 2006-07, Rs. 1,45,00,000/- in Financial Year 2007-08 and Rs. 79,00,000/- in Financial Year 2008-09. Out of the above sum assessee repaid Rs. 50,00,000/- on 18th March, 2010. Based on this the re-opening has been made. Fr AY 2007-08, 2008-09 and 2009-10.

17. The ld. AR stated that the reasons have been recorded by the Assessing Officer on 27th of March, 2014 based on assessment order for AY 2011-12. However, the assessment for AY 2011-12 was made on 31.03.2014 and reasons recorded for all these three years on 27/03/2014. He stated that in the first para of the reasons recorded Assessing Officer has referred assessment for assessment year 2011-12, wherein assessee was assessed under Section 143(3) of the Act at an income of Rs. 7,35,76,210/-. He submitted that how the Assessing Officer could have stated on 27th of March 2014 so where assessment order for AY 2011-12 was passed on 31.03.2014. He further submitted that how the approval could have been granted on the above reason under Section 151 of the Act on 27th of March, 2014 wherein the first para of the reasons recorded by the ld. Assessing Officer itself did not happen on that date. In short, he submitted that the reasons recorded by the ld. Assessing Officer are backdated.
18. He further submitted that the above sum was received in three different financial years as advance. He submitted that in assessment year 2011-12 Assessing Officer could not have said that assessee has failed to prove the genuine creditworthiness and the advance received in earlier years. He further submitted that :-
- i. reasons are not based on any tangible material and does not have any live link.
 - ii. The reasons have been recorded by the ACIT, Circle 32(1), New Delhi, based on the assessment order for assessment year 2011-12 passed by JCIT, Range 32, New Delhi.
 - iii. No independent enquiries have been made.
 - iv. The satisfaction recorded by the higher authorities is mechanical.

In view of the above facts it was submitted that the re-opening is invalid.

19. On the merits of the case it was submitted that assessee has filed the confirmation of the party for Rs.10,00,000/- received mentioning the Permanent Account Number, copy of Memorandum & Article of

Association of PACL, copy of the assessment order dated 15.06.2010 in the case of the lender where the original assessment made in the hands of the lender assesseeing its income of more than Rs.20 crores. The order of the co-ordinate bench in the case of lender was also submitted. In view of this, it was submitted that assessee has established the identity and creditworthiness of the above party. With respect to the genuineness of the above transaction it was stated that assessee entered into a Memorandum of Understanding with the above party which is placed at page Nos. 34 – 37 of the paper book. It was further submitted that merely because the copy of the agreement is notarized in U.P., it cannot be rejected. He submitted that merely because the advance against the property was received in three instances and subsequently as the deal could not happen, it cannot become a bogus transaction. Even otherwise out of the above sum received the assessee has provided the contract services to the creditor amounting to Rs. 2,37,95,818/- which was already offered on the credit side of the profit and loss account. Now it cannot be said that the advance received in earlier years was taxable as income of the assessee under Section 68 of the Act. Thus, he submitted that assessee has discharged her initial onus by showing identity, creditworthiness and Genuiness of the transaction therefore, even on the merits of the case the addition cannot be made.

20. The Id. Sr. DR, Shri B. R. Mittal, vehemently supported the orders of the lower authorities. It was stated that at the time of making assessment order for assessment year 2011-12 it was found that the cash credit shown by the assessee in earlier years is bogus and, therefore, the case of the assessee was re-opened for all these three years. It was stated that there is nothing unusual in the dates . He submitted that the assessment order is framed on 31st of March, 2014 whereas the reasons have been recorded on 27th of March, 2014. The reasons recorded by the Assessing Officer are not back dated. He submitted that the reasons are recorded simultaneously.

21. With respect to the merits of the addition, it was stated that assessee has failed to prove the genuineness of the transaction. He referred to

para No. 5 of the order for assessment year 2011-12 and submitted that the case of the assessee is re-opened based on that. He vehemently supported the orders of the lower authorities.

22. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the ld. Assessing Officer has recorded the reasons which are already reproduced above wherein it is stated that for assessment year 2011-12 assessee was assessed under Section 143(3) of the Act at an income of Rs.7,35,76,210/- against the returned income of Rs.63,16,210/- derived from the business of running the restaurant under the name and style of 'Dhaba TOT'. Based on this fact the notice was issued under Section 148 of the Act on 27th of March 2014. The assessee has shown that the assessment order for assessment year 2011-12 was passed by the Assessing Officer only on 31st of March 2014. Therefore, it is clear that at the time of recording the reasons, there was no assessment made for assessment year 2011-12. Even the approval granted by the JCIT, Range 32, New Delhi, who is also same officer who passed assessment order in the case of the assessee for assessment year 2011-12. He also granted the approval to the assessee saying that:

“I am satisfied being the reasons as recorded by the Assessing Officer and this case are fit for re-opening of assessment under Section 147 hence approved.”

Thus, based on the above the fact, it clearly shows that the reasons were recorded on or before 27th of March 2014 i.e. the date on which notice under Section 148 of the Act is issued. In the reasons the fact is mentioned that assessee is assessed under Section 143(3) of the Act for assessment year 2011-12 at Rs. 7,35,76,210/-. However, such assessment is passed only on 31st of March, 2014, which is evident from the date of the order mentioned in the caption of the order and also the issue of demand notice issued along with that. Further, the person approving the reasons recorded is also the same officer i.e. JCIT, Range 32, New Delhi, who passed the assessment order in the case of the assessee for assessment year 2011-12. Thus, from the above it is

apparent that the approving authority who passed assessment order for assessment year 2011-12 on 31.03.2014 approved the reasons recorded by the Assessing Officer i.e. ACIT, Circle 32(1), New Delhi, on or before 27th of March, 2014 stating that assessment order for assessment year 2011-12 has been passed is clearly a back dated reason recorded by the Assessing Officer and approved by the lower authorities. Such reasons do not have any legs to stand and further the approving authority also did not apply his mind at the time of approving the reasons. Thus, reasons were recorded on 27th of March, 2014 based on assessment order for assessment year 2011-12 which was passed only on 31.03.2014 clearly shows that as on the date of recording of the reasons the assessment order for assessment year 2011-12 did not exist at all. In view of this, we do not have any hesitation in quashing the re-assessment proceedings. Thus, without going into the merits of the above, we quash the re-assessment proceedings and the order passed by the Id. Assessing Officer for assessment year 2007-08. Accordingly, the additional ground raised by the assessee is allowed.

23. For assessment years 2008-09 & 2009-10 identical circumstances exist where the case of the assessee is re-opened on the basis of the reasons recorded on 27th of March, 2014. Therefore, we also quash the re-assessment made for these two years. Accordingly, the appeals of the assessee are allowed for these two years also.
24. In view of above facts, accordingly we quash reopening of the assessment for all these three years and allow the appeal of the assessee on this reason.

Order pronounced in the open court on : 29/10/2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 29/10/2021

MEHTA

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	29.10.2021
Date on which the typed draft is placed before the dictating member	29.10.2021
Date on which the typed draft is placed before the other member	29.10.2021
Date on which the approved draft comes to the Sr. PS/ PS	29.10.2021
Date on which the fair order is placed before the dictating member for pronouncement	29.10.2021
Date on which the fair order comes back to the Sr. PS/ PS	29.10.2021
Date on which the final order is uploaded on the website of ITAT	29.10.2021
date on which the file goes to the Bench Clerk	29.10.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	